

FILED

July 16, 2003

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION : Administrative Action
OR REVOCATION OF THE LICENSE OF: :
KHAJA NASEERUDDIN, M.D. : **FINAL DECISION AND ORDER**
TO PRACTICE MEDICINE AND SURGERY :
IN THE STATE OF NEW JERSEY :
:

This matter was opened to the New Jersey State Board of Medical Examiners via the **receipt** and review of a Recommended Decision and Order of a Committee of the Board dated May 23, 2003. That Recommended Decision and **Order** is attached **hereto** and incorporated **herein except** to **the** extent that it **is** modified below. The Board reviewed the Committee recommendations at its meeting of June 11, 2003, the entire **record** before the Committee including the transcript of hearing, testimony, arguments of counsel, and the written submissions of respondent **dated** June 4, 2003 and of the Attorney General dated June 3rd and June 9th, 2003.

The Board, similar to the Committee, is concerned that respondent has engaged in acts **which** violate the most basic boundaries of the physician/patient relationship on numerous **occasions** over **several** years. Additionally our review of the **transcript** of the hearing regarding mitigating circumstances convinces us that respondent does not **appreciate** the gravity of his acts, and indeed appears to minimize and downplay his actions while

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simultaneously attempting to maintain that **he** takes full responsibility or **blame** for his **behavior**. Furthermore, the Board **did not** consider respondent's June 4th submission to the extent that it attempted to contradict respondent's no contest plea in New York¹.

This matter involved the use **by** respondent of his role as a **physician** to engage in repeated predatory behavior. Our **review** of the documents gives us pause as to whether respondent will **ever** be ready to re-enter the practice of medicine. Therefore **we** believe it is premature to provide guidelines regarding any application for reinstatement or credit for any time **period** during which respondent has been out of practice. The Board will thus modify the recommended decision of the Committee to **eliminate** all references to such guidelines, credit and an application for reinstatement. Hence, the order on page 9 is modified to **eliminate** the last **eleven** (11) lines of the Discussion section of the Order from the word "However" to the word "respondent", and the "ordered" provisions **will** be modified accordingly.

We **adopt** the reasoning of the Committee except that we find the serious misconduct outlined in the matter before us demonstrates behavior so totally inconsistent with the

¹ The Board **determined** that respondent's submission of June 4, 2003 is virtually identical to a document **previously** identified in the record as R-1. R-1 **was** submitted **by** respondent prior to the time he requested and was granted a hearing limited solely to mitigating circumstances for a determination of penalty,

responsibilities which a physician owes to his patients that we do not contemplate at this time a re-application for licensure in the time frame contemplated by the Committee. Finally, we are not persuaded by respondent's comparisons to other cases previously determined by the Board, many of which were actually distinguishable from this matter. As pointed out by the State there are many cases of multiple allegations of sexual misconduct involving patient care which result in lengthy loss of licensure.

IT IS THEREFORE ORDERED ON THIS 8th DAY OF JULY 2003

1. The Recommended Decision and Order of the Committee dated May 23, 2003 is adopted by the Board with the exception that page 9 of the Committee's Recommended Order is modified to eliminate the seventh through seventeenth lines of the final paragraph prior to the "ordered" provisions (the last eleven lines of the "Discussion" section of the Order), and the "Ordered" provisions beginning on page 9 are amended to read as follows:

a. That the license to practice medicine and surgery in the State of New Jersey of respondent Khaja Naseeruddin, M.D. is revoked effective June 11, 2003,

b. Respondent shall pay costs for the use of the State consisting of attorneys fees, court reporter fees and transcript fees. An application for such costs shall be considered by the Board upon certification submitted by the State. The respondent shall have five (5) days to respond to such application in writing.

The Board will determine the amount of costs and fees based on such submissions.

NEW JERSEY STATE BOARD **OF** MEDICAL EXAMINERS

By: William Harrer M.D. B.L.D.
William Harrer, M.D., B.L.D.
President

MAY 23 2003

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION : Administrative Action.
OR REVOCATION OF THE LICENSE OF: :
: :
: **RECOMMENDED DECISION & ORDER**
KHAJA NASEERUDDIN, M.D. : **OF COMMITTEE**
: :
TO PRACTICE MEDICINE AND SURGERY :
IN THE STATE OF NEW JERSEY :

This matter was opened to the New Jersey State Board of Medical Examiners upon the filing of a Provisional Order of Discipline on March 15, 2001. The Provisional Order of Discipline contained Preliminary Findings of Fact that via an Order signed on July 25, 2000, respondent surrendered his license as a physician in the State of New York following charges of twenty-five (25) specifications of professional misconduct. Respondent had agreed not to contest seventeen (17) of the specifications of professional misconduct alleging that he performed unchaperoned physical examinations of eight female patients, touching them and speaking to them in an overtly sexual manner, and that he inappropriately touched and made sexually oriented statements to a female co-worker. The Provisional Order of Discipline contained preliminary conclusions of law indicating that respondent's failure to contest the charges in New York, and his agreement to surrender his license to practice medicine, were tantamount to the revocation or

suspension of his New York license and also established grounds for the suspension or revocation of his New Jersey license pursuant to N.J.S.A. 45:1-21. Based on the foregoing Findings of Fact and Conclusions of Law, the Provisional Order of Discipline contained a proposed penalty including revocation of respondent's license to practice medicine and surgery in the State of New Jersey.

Following consideration of Dr. Naseeruddin's July 12, 2001 response to the Provisional Order of Discipline and the State's August 12, 2001 reply, the Board of Medical Examiners voted at its September 19, 2001 meeting to finalize the Provisional Order of Discipline with a Final Order of Discipline on the same terms as contained in the Provisional Order of Discipline. However, a Final Order was never entered. In July 2002, counsel for Dr. Naseeruddin sought reconsideration and requested that the Board issue an Order limiting Dr. Naseeruddin's practice of medicine to a federal facility such as a Veterans Affairs Medical Center (R-3). The State opposed that application. Counsel for Dr. Naseeruddin then requested a hearing limited to mitigating circumstances for a determination of penalty via a letter of August 19, 2003 (R-4). Counsel represented that it was not Dr. Naseeruddin's intention to re-litigate any of the underlying issues concerning the proceeding before the New York Board for Professional Medical Conduct, but rather Dr. Naseeruddin wished to argue that "a sanction less than a full revocation of his license [is] justified under the

circumstances." Further Dr. Naseeruddin's counsel represented that he had not practiced medicine and surgery in the State of New Jersey since the surrender of his New York license in July of 2000.

At its meeting of September 11, 2005, the Board voted to grant respondent a hearing regarding mitigating and aggravating circumstances for a determination of penalty. Counsel for respondent agreed the mitigation hearing would be held before a Committee of the Board of Medical Examiners, with the full Board rendering a final decision based on review of the record of the hearing in front of the Committee.

The hearing regarding mitigating circumstances was held on April 23, 2003 before a Committee consisting of Dr. David M. Wallace, M.D., Vice President of the Board of Medical Examiners and Dr. Edwin Trayner, M.D. The State was represented by Jeri L. Warhaftig, DAG, and respondent appeared represented by Anthony F. LaBue, Esq. of DeCotris, Fitzpatrick, Gluck and Cole, LLP. At the hearing, certain documents were stipulated into evidence,¹ the

¹The documents entered into evidence at the hearing were:

J-1 - Provisional Order of Discipline with attachments (documents regarding New York licensing proceeding and surrender).

R-1 - 7/21/01 letter - Mr. LaBue to DAG Lewis (with attachments).

R-2 - 8/9/02 letter - Mr. LaBue to the Board of Medical Examiners.

R-3 - 7/2/02 letter - Mr. LaBue to DAG Levine.

R-4 - 8/19/02 letter - Mr. LaBue to the Board of Medical Examiners.

R-5 - C.V. of Dr. Naseeruddin

R-6 - List of Journals

R-7 - Computer printout of CME - Record of Khaja Naseeruddin, M.D.

Committee heard the testimony of Dr. Naseeruddin and three witnesses on his behalf, heard arguments of counsel and reviewed written statements offered on behalf of respondent.

In respondent's testimony, he acknowledged that he had made errors in connection with the incidents underlying the New York disciplinary action. He *took* the position that *he* had become "too casual" (T21) with his patients, that he had used the same language as his patients in describing their bodies including "boobs" and "butt" (T22). He explained his actions underlying the no contest plea to having fondled patients breasts as follows: "...They are lying on the table, move the stethoscope fully on the chest. ... I move sometimes my hand around if they are upset or something, ... which I know now that I was wrong." (T21). Dr. Naseeruddin testified he did not do this for "intention," [sic] (T21). He acknowledged he should have been "more professional in [his] communication..." and claimed, without presenting any documentation, that he had seen a psychiatrist and a counselor or therapist on a number of occasions, and that additional counseling had not been recommended (T23-T25).

As to the specific allegations in the complaint, respondent acknowledged "more or less" everything that was contained in the Statement of Charges in New York (T32), yet when asked how his casual practices resulted in massaging and fondling patient's breasts, he explained that he was "moving the stethoscope freely

and my hand is touching and moving her chest in the process (T31-T32).” When asked whether this was for sexual gratification, respondent indicated “I don’t know what sexual gratification means. I understand the allegation. ...I made mistakes and I’m sorry for that. I take the whole blame.” (T31-T32). As to an allegation uncontested in New York as to Nurse F, that he grabbed her arm, touched her buttocks and tried to kiss her, respondent claimed that he “put my hand around her” (T-36). As to the allegation (to which he plead no contest in New York), that he had inserted a finger in a patient’s vagina, respondent denied the allegation (T45 and T47) and as to making comments to a patient that a “blow job” could increase her protein intake, respondent claimed the patient had used that terminology first, and that he utilized the same words (T37-T39).

In explaining what he was told by his psychologist or counselor as to his actions, respondent averred he was told that he “...became too Americanized...[had] not appropriately treated patients and you should’nt have used the language in the professional setting. ...” [T40-41]. Respondent claimed to have sent a letter of apology to his patients and colleagues (T49) which was not presented to the Committee.

It was represented to the Committee that respondent was criminally convicted of endangering the welfare of a minor regarding a patient who may not have been listed in the New York

Statement of Charges. Respondent offered to forward documentation regarding his plea to those charges.²

Respondent also testified that his future plans in medicine did not contemplate private practice, that he wished to practice on male patients, but was exploring options and perhaps would see female patients in a setting such as an emergency room, where chaperones were present.

Respondent presented three witnesses who testified that Dr. Naseeruddin enjoys a good reputation in the community. Dr. Sal DeVicenzio, described respondent as a caring and competent physician who referred patients to him and was always honest and sincere in his relationship with Dr. DiVincenzo, (T61 1 to 21), Dr. Aslam Jangda, who testified he is held in high regard in the community and the hospital (T65); and Dr. Dhry, who testified that respondent's reputation as a physician and as a person is excellent (T67).

DISCUSSION

The Committee considered this matter including all the testimony and materials submitted and arguments advanced regarding mitigation of penalty. Notwithstanding the testimonials of colleagues and patients, we are persuaded that the charges to which respondent pled no contest are extremely serious and violate the most basic

²Documentation has not been received by the Committee as of this time.

standards of the practice of medicine. It has been accepted since the time of Hippocrates that sexual imposition of any kind on a patient is improper, We Fin;! that the conduct as to the seventeen (17) counts in the New York Statement of Charges demonstrates behavior totally inconsistent with the responsibilities which a physician owes to his patients.

The charges to which respondent plead no contest include that during *the* course of a physical examination, respondent touched, fondled and/or massaged or squeezed the breasts of eight (8) female patients without medical justification; respondent placed ungloved fingers in the vagina of (1) one patient without medical justification; respondent told one patient she should "do blow jobs" on her boyfriend to increase her protein intake, or words of similar import; also informing the same patient she had "nice breasts" and a "nice butt.." and suggested she perform oral sex. Respondent questioned one hospitalized patient in *e* crude fashion about her sexual experiences and preferences, including "why young girls desire anal intercourse", and whether her husband purchases Victoria's Secret for her; and questioned one patient who was present to review test results relating to a neck examination about intimate details of her experience as a rape victim including the size of her attacker's penis, whether she had anal sex with the attacker, and how long the attack lasted, all without medical justification. The charges also included allegations of hugging

patients on the exam tables and slapping patients' buttocks. Finally the charges to which respondent plead no contest included allegations that after a co-worker Nurse F, assisted him in an examination of a patient, he asked her how she liked to have her breasts examined, and how she liked to have her legs opened when a physician examined her, he grabbed her arm, touched her buttocks and tried to kiss her. The fact that respondent engaged in sexually inappropriate behavior with numerous patients and a nurse makes it clear that respondent is not worthy of the trust that the Board needs to repose in a licensee. The fact that the incidents involving Nurse F occurred in 1995, that respondent was immediately made aware by her that the conduct was unwelcome and inappropriate and that the hospital subsequently brought the allegations to his attention, yet respondent engaged in numerous additional incidents of inappropriate behavior with patients, serves to underscore that finding.

Our concerns regarding *the* behavior acknowledged by respondent through his no contest plea in New York were not allayed by his appearance before us. Respondent was evasive and engaged in circumlocution as to what he did and why he did it. His attempts to minimize his behavior, for example by claiming that he was simply putting his hand around Nurse F, or that he simply brushed his arm on patients' breasts when he acknowledged in New York that he fondled them, belie his claim that he is taking full

responsibility for his actions. Additionally, he will not be heard now to deny the allegation of digital vaginal penetration of a patient following his no contest plea. In short we find that respondent was not credible during his appearance before us. His attitude bespeaks an individual who is not trustworthy nor currently appropriate to re-enter the practice of medicine.

* However, we have also considered respondent's claim that he has not practiced medicine in New Jersey since July 2000, and find it appropriate to grant credit to respondent for the period he has been out of practice. Therefore we recommend that the Board adopt an order reconsidering the penalty previously imposed to contemplate a possible re-application if respondent meets certain conditions, and granting credit for the time he has been out of practice. We note that ordinarily a sanction as severe as revocation of license would not contemplate possible re-application in the relatively brief time frame provided considering the grant of credit to respondent.

THEREFORE, IT IS ON THIS 23rd DAY OF May 2003,

ORDERED:

1. That the license to practice medicine and surgery in the State of New Jersey of respondent Khaja Naseeruddin, M.D. is revoked, effective ~~JUNC~~ PRO ~~TUNC~~ July 2000, the date on which respondent surrendered his license in the State of New York and represents that he refrained from practice in the State of New

*Modified by the Board at its June 11, 2003 meeting and reflected in the Board Order dated July 8, 2003.

Jersey. No application for reinstatement of license shall be considered until respondent has been out of practice a total of five (5) years from the date of revocation. No period of time during which respondent actively practices medicine in any jurisdiction will be counted toward this (5) year period.

2. Respondent shall pay costs for the use of the State consisting of attorneys fees, court reporter fees and transcript fees. An application for such costs shall be considered by the Board upon certifications submitted by the State. Respondent shall have five (5) days to respond to such application in writing. The Board will determine the amount of costs and fees based on such submissions.

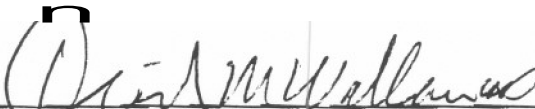
3. Any application for reinstatement of license by respondent shall be accompanied by a evaluation by a psychiatrist approved by the Board, who has knowledge of all of the prior proceedings, has engaged in whatever therapy or rehabilitative activity is recommended by the evaluator, and which shall contain a recommendation that respondent may safely practice medicine without posing any danger to the public safety, health and welfare.

4. Upon adequate application for reinstatement, respondent shall appear before the Board or a Committee thereof at which time the Board/Committee shall consider, but not necessarily be limited to inquiry as to compliance with the terms of this Order, respondent's activities since revocation of his license, and

respondent's plans and ability to comply with the requirements of the law. The burden shall be upon respondent to demonstrate to the Board's satisfaction his competency and fitness to practice. Upon any reinstatement of license by the Board, respondent's license will be subject to such conditions and restrictions as the Board may deem warranted at that time, but which shall include, at a minimum, a limitation that respondent shall treat no female patients, and require such re-education as is deemed necessary by the Board.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By:



David M. Wallace, M.D.,
Vice President/Committee Chair

ADDENDUM

Any licensee who is the subject of an order of the Board suspending, revoking or otherwise conditioning the license, shall provide the following information at the time that the order is signed, if it is entered by consent, or immediately after service of a fully executed order entered after a hearing. The information required here is necessary for the Board to fulfill its reporting obligations:

Social Security Number: _____

List the Name and Address of any and all Health Care Facilities with which you are affiliated:

List the Names and Address of any and all Health Maintenance organizations with which you are affiliated:

Provide the names and addresses of every person with whom you are associated in your professional practice: (You may attach a blank sheet of stationery bearing this information).

[†] Pursuant to 45 CFR Subtitle A Section 61.7 and 45 CFR Subtitle A Section 60.8, the Board is required to obtain your Social Security Number and/or federal taxpayer identification number in order to discharge its responsibility to report adverse actions to the National Practitioner Data Bank and the HIP Data Bank.

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED**

APPROVED BY THE BOARD ON MAY 10,2000

All licensees who are the subject of a disciplinary order of the Board are required to **provide** the information required on the Addendum to these Directives. The information **provided will be maintained separately and will not be part of the public document filed** with the Board. Failure to **provide** the information required may **result** in further **disciplinary** action for failing to cooperate with the **Board, as required by N.J.A.C. 13:45C-1 et seq.** Paragraphs 1 through 4 **below shall** apply **when a license is suspended or revoked or permanently surrendered**, with or without prejudice. Paragraph 5 **applies** to licensees who are the subject of an **order** which, **while** permitting continued practice, **contains** a probation or monitoring requirement.

1. Document Return and Agency Notification

The licensee **shall** promptly **forward** to the Board office at Post Office **Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183**, the original license, current biennial registration **and**, if applicable, the original CDS registration. In addition, if the licensee **holds** a Drug Enforcement Agency (DEA) registration, he or she shall promptly **advise** the **DEA** of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office **for** the **return** of the documents previously surrendered to the Board. In addition, at the conclusion of the term, **the** licensee should contact **the DEA** to **advise** of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in **this State**. This prohibition not only **bars** a licensee from rendering professional services, but also from providing an opinion **as** to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee **need** not affirmatively **advise** patients or others of the revocation, suspension or surrender, the licensee **must** truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee **is** also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or **equipment**. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number **by** any health care practice or any other licensee or health care provider. (In situations where the licensee has **been** suspended for less than one year, the **licensee** may accept payment from another professional who is using his/her office **during** the **period** that the **licensee is** suspended, for the payment of salaries for office staff employed at the time **of** the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of